IN THE CIRCUIT COURT
OF JEFFERSON COUNTY, ALABAMA

MERRILL LYNCH, PIERCE, FENNER & SMITH INC.,	)
Plaintiff,	)
v.	) **Civil Action No. CV-00-2000**
LEON C. BAKER, P.C. and LEON C. BAKER individually	)

ORDER

This matter has come before the Court on the Verified Complaint filed by Plaintiff Merrill Lynch, Pierce, Fenner, & Smith Inc. This Court has conducted a full evidentiary hearing, and it has given due consideration to the issues presented. It hereby holds that both Defendants are collaterally estopped from arguing that Plaintiff is legally liable for the court-ordered withdrawal of over $700,000 from Merrill Lynch Account Number 754-96534 ("Account 754-96534").

In particular, the Court finds that, for the following reasons, Plaintiff has satisfied the requirements for the issuance of a permanent injunction:

1. This Court finds that it has personal jurisdiction over Defendant Leon C. Baker ("Mr. Baker"). Prior courts, including this Court in J.R. Bennett et al. v. Leon C. Baker et al., CV 94-5629 ("CV 94-5629"), have held that Alabama courts have jurisdiction over Mr. Baker. Certainly this Court has personal jurisdiction over Mr. Baker in this case, which is a related and ancillary action that seeks to enforce this Court's rulings in CV 94-5629. Independent of these prior rulings, this Court finds that Mr. Baker has had sufficient contacts with the State of Alabama to satisfy the requirements of personal jurisdiction in this action.

2. This Court also finds that it has personal jurisdiction over Leon C. Baker, P.C. ("the P.C."). Assuming for present purposes that the P.C. is a separate and bona tide

entity, the P.C. has had sufficient contacts with the State of Alabama to satisfy the requirements of personal jurisdiction. For example, the P.C. recently pursued and litigated claims in federal court here in Birmingham before Judge U.W. Clernon.

3. Thus, this Court is empowered to decide the preclusive effect of CV 94-5629 on the Defendants.

4. In CV 94-5629, this Court, acting through Judge Roger Monroe, entered several orders requiring Plaintiff to transfer funds out of Account 754-96534.

5. Although Defendants deny it, Judge Monroe made at least two findings in CV 94-5629 in connection with his orders requiring the transfer oft said funds from Account 754-96534. These two findings were made after Judge Monroe had given Mr. Baker several opportunities to present evidence against said findings.

6. First, Judge Monroe specifically found in CV 94-5629 that Account 754-96534 was a personal account of Mr.

Baker's, not a P.C. account. See CV 94-5629 October 25, 1994 Order, p. 4 ("The Court specifically finds as a matter of fact that Baker's Merrill Lynch Account #754-96534 . . . is a personal account of Baker's.").

7. Second, Judge Monroe specifically found that Merrill Lynch was to be held harmless for the transfer of funds from Account 754-96534. See CV 94-5629 October 27, 1994 Order ("Merrill Lynch is not liable to Leon C. Baker or Leon C. Baker, P.C. as a result of Merrill Lynch's transfer and liquidation of securities as directed by this Court.").

8. These two findings ("the Findings"), which were actually litigated and which were necessary to Judge Monroe's judgment, satisfy the requirements of collateral estoppel as between Plaintiff and Mr. Baker. Accordingly, Mr. Baker is collaterally estopped from relitigating the Findings with Merrill Lynch or those in privity with Merrill Lynch.

9. The Findings also satisfy the requirements of

collateral estoppel as between Plaintiff and the P.C. The primary reason that this is true is that, under New York law or Alabama law, the P.C. is the alter ego of Mr. Baker, with no bona tide, independent legal existence. Accordingly, its corporate veil should be and hereby is pierced.

10. The Court's alter-ego finding is based on clear and compelling evidence. Some illustrative examples of this evidence follow: Mr. Baker has been the P.C.'s only president and is the only person with a financial interest in the P.C.; the P.C. has had no employees since 1987; for years, the P.C. has not actively engaged in the practice of law (in fact, for years it has done nothing on a daily basis); it has held no meetings; it has kept no corporate minutes; it has paid no salaries; its funds have been used for Mr. Baker's personal purposes; it has been otherwise misused for improper purposes; and Mr. Baker himself gave testimony suggesting that he and his P.C. were one and the same.

11. Even assuming, for the sake of argument, that the P.C. is bona fide, there are several reasons why it is bound by the Findings in CV 94-5629. This Court holds that: (1) the P.C. is and has always been closely-held by Mr. Baker, which under the law is enough for it to be bound to the Findings; (2) the P.C. substantially participated in the control of Mr. Baker's defense of CV 94-5629; (3) Mr. Baker adequately represented the P.C. 's interests when defending CV 94-5629; and finally, (4) the P.C. could have intervened in CV 94-5629 but deliberately chose not to do so. Accordingly, the P.C. is collaterally estopped from relitigating the CV 94-5629 Findings with Merrill Lynch or those in privity with Merrill Lynch.

12. The P.C. has filed an arbitration claim against Plaintiff with the National Association of Securities Dealers ("NASD"), which is styled Leon C. Baker. P.C. v. Merrill Lynch, Pierce, Fenner & Smith Inc., NASD Case No.99-03764.

Said arbitration seeks to relitigate the Findings described above.

13. This Court has reviewed the law cited by the parties hereto, and it holds that it has the power to enjoin an arbitration that seeks to relitigate already-decided issues. Thus, because the P.C.'s NASD arbitration (referenced above) seeks to relitigate identical issues that were actually litigated and necessary to the judgment in CV 94-5629, and because the P.C. is bound by the Findings in CV 94-5629, this Court will permanently enjoin the PC. from pursuing said arbitration.

14. It is unnecessary for this Court to enjoin Defendants from filing litigation in another court. A permanent injunction against any arbitration will suffice, since an arbitration forum is the only forum in which Defendants could have brought claims against Merrill Lynch (absent this Court's injunction, of course). Indeed, Defendants have represented to this Court that their only recourse against

Merrill Lynch is through an arbitration. Defendants' Memorandum of Law in Support of Cross Motion to Dismiss the Complaint, p. 4 ("If this Court were now to enjoin the pending arbitration by the NASD, as Merrill Lynch demands, the claim against. Merrill Lynch could not be asserted anywhere else."). In any event, if Defendants were to go back on this commitment and file a case in another court, Plaintiff could – and should – use the preclusive force of the instant Order to have said case dismissed with prejudice. Plaintiff would also have a claim for abuse of process or malicious prosecution, were such a case to be filed.

15. However, out of an abundance of caution, this Court will enjoin Defendants from giving testimony or from causing others to give testimony that relates in any way to the Findings described above, including testimony that is used in an attempt to hold Merrill Lynch liable for the withdrawal of the funds from Account 754-96534. If Defendants violate this

aspect (or any other aspect) of this Court's injunction, they can be held accountable for contempt.

16. This Court has considered all of the arguments that Defendants have raised in opposition to Plaintiff's request for a permanent injunction, including the arguments raised in Defendants' Memorandum of Law in Support of Cross Motion to Dismiss the Complaint (as well as the arguments raised in Defendants' underlying motion). All such arguments are hereby rejected as meritless.

Accordingly, this Court hereby ORDERS, ADJUDGES, and DECREES as follows:

(1) Defendant Leon C. Baker, P.C. shall be and hereby is PERMANENTLY ENJOINED, directly and indirectly, whether alone or in concert with others, from prosecuting or maintaining its current National Association of Securities Dealers arbitration case against Plaintiff, which is styled Leon C. Baker P.C. v. Merrill Lynch, Pierce, Fenner, & Smith Inc.,

NASD Case No.99-03764. Instead, said arbitration case is to be dismissed; and

(2) Both Defendants (Leon C. Baker, P.C. and Leon C. Baker individually) shall be and hereby are PERMANENTLY ENJOINED from filing, bringing, maintaining, or facilitating (either directly or indirectly, and whether alone or in concert with others) any arbitration case that seeks to hold Plaintiff (or its employees, agents, or representatives, including its attorneys) liable or responsible for (1) the actions of this Court in J.R. Bennett et al. v. Legn C. Baker et al., CV 94-5629 or (2) the withdrawal(s) that this Court ordered from Merrill Lynch Account Number 754-96534; and

(3) Both Defendants (Leon C. Baker, P.C. and Leon C. Baker individually) shall be and hereby are PERMANENTLY ENJOINED from filing or prosecuting any arbitration claim that challenges the two Findings of this Court in CV 94-5629, as defined above; and

(4) Both Defendants (Leon C. Baker, P.C. and Leon C.

Baker individually) shall be and hereby are PERMANENTLY ENJOINED from giving testimony or from causing others to give testimony that relates in any way to the Findings described above, including testimony that is used in an attempt to hold Merrill Lynch liable for the withdrawal of the funds from Account 754-96534. This prohibition specifically includes giving testimony by affidavit or otherwise.

The Court further holds that all of Defendants' pending motions are DENIED.

Each party shall bear its own costs.

This final judgment is dated the 23 day of May, 2000.

/s/ Judge N. Daniel Rogers, Jr.
JUDGE N. DANIEL ROGERS, JR.
CIRCUIT COURT JUDGE

APPENDIX B

MERRILL LYNCH, PIERCE, FENNER & SMITH INC.,	)	CIRCUIT COURT
Plaintiff,	)	TENTH JUDICIAL CIRCUIT
v.	)	OF ALABAMA
LEON C. BAKER, P.C. and LEON C. BAKER individually	)	CIVIL ACTION NO. CV-00-2000

ORDER

This case came before the Court this date on the following matters:

(1) Motion for a New Trial With Respect to Permanent Injunction and for Alteration or Amendment of Order and Judgment, filed by Leon C. Baker and Leon C. Baker, P.C. on June 13, 2000; and

(2) Plaintiff's Response in Opposition to Defendants' "Motion for a New Trial With Respect to Permanent Injunction and for Alteration or Amendment of Order and Judgment," filed on June 22, 2000.

The Court notes that in the Motion filed by said Lean C. Baker and Leon C. Baker, P .C., oral argument is not requested..

After consideration of the defendants' said Motion and the response by the plaintiff, the said Motion for a New Trial With Respect to Permanent Injunction and for Alteration or Amendment of Order and Judgment, filed by Leon C. Baker and Leon C. Baker, P.C., is overruled and denied.

DONE AND ORDERED, this 28th day of June, 2000.

/s/ N. Daniel Rogers, Jr.
N. Daniel Rogers, Jr.
Circuit Judge

cc: Mr. Carl S. Burkhalter
Mr. R. Allen Kilgore, Jr
Mr. James R. Sturdivant